

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Raquel Velasquez	Team: Squad #12	CCRB Case #: 201609532	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Wednesday, 09/28/2016 10:20 AM	Location of Incident: 1705 Lexington Avenue	18 Mo. SOL 3/28/2018	Precinct: 23
Date/Time CV Reported Wed, 11/16/2016 7:37 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 11/16/2016 7:37 AM

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Mark Nicoletti	21538	945266	023 PCT
2. POF Shaunte Johnson	25742	938727	023 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Mark Nicoletti	Force: Police Officer Mark Nicoletti used physical force against § 87(2)(b)	
B.POM Mark Nicoletti	Abuse: Police Officer Mark Nicoletti damaged § 87(2)(b)'s property.	
§ 87(4-b) § 87(2)(g), § 87(2)(g)		

### Case Summary

On November 16, 2016, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System.

On September 28, 2016, at approximately 10:20 a.m., PO Mark Nicoletti and PO Shaunte Johnson, from the 23<sup>rd</sup> Precinct, approached § 87(2)(b)'s double parked vehicle in front of 1705 Lexington Avenue in Manhattan. Over a span of approximately forty minutes, PO Nicoletti issued § 87(2)(b) § 87(2)(b) **(Board Review 01)** and instructed § 87(2)(b) § 87(2)(b) to move his vehicle. § 87(2)(b) locked himself inside his vehicle and did not move his vehicle. § 87(2)(b) believed he was having a heart attack and an ambulance was called. After the ambulance arrived, PO Nicoletti allegedly punched § 87(2)(b) twice in the head (**Allegation A**) and damaged § 87(2)(b)'s shirt, cellphone, and the driver seat of his vehicle (**Allegation B**). § 87(2)(b) was removed to § 87(2)(b) thereafter. § 87(4-b) § 87(2)(g)

§ 87(2)(b) provided two video recordings of the incident which were recorded by and given to him by unidentified individuals (**Board Review 02 and 03**).



201609532\_20161228\_1237\_DM.mp4

§ 87(2)(b) alleged that, while at the hospital, PO Nicoletti showed other officers a video recording of § 87(2)(b) § 87(2)(b) did not see the video, but he heard the audio which sounded like his interaction with the officers. § 87(2)(g)

### Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of January 19, 2017, § 87(2)(b) has not filed a Notice of Claim regarding this incident (**Board Review 04**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (**Board Review 06**).
- PO Mark Nicoletti has been a member of the service for nine years and there are no substantiated CCRB allegations against him § 87(2)(g)
- PO Shaunte Johnson has been a member of the service for eleven years and there are no substantiated CCRB allegations against her § 87(2)(g)

### Findings and Recommendations

**Allegation A: Force- Police Officer Mark Nicoletti used physical force against § 87(2)(b)**

It is undisputed that § 87(2)(b) left his vehicle double parked in front of 1705 Lexington Avenue and, as a result, was issued three summonses over a span of approximately forty minutes. It is undisputed that PO Nicoletti told § 87(2)(b) to move his vehicle after issuing each summons. It is undisputed that § 87(2)(b) locked himself in his vehicle and refused to comply with PO Nicoletti's commands.

§ 87(2)(b) stated that he did not feel well and that his vehicle was having mechanic problems. After being issued the second summons, § 87(2)(b)'s health worsened and he believed he was having a heart attack. He entered his vehicle and locked himself inside. § 87(2)(b) called 911 and an ambulance arrived approximately forty minutes later. One of the EMT's approached § 87(2)(b)'s vehicle. § 87(2)(b) lowered the window, asked for help, and stated that he was having a heart attack. The EMT said he did not speak Spanish, § 87(2)(b)'s primary language. PO Nicoletti approached and the EMT opened the driver side door. The EMT and PO Nicoletti then pulled on § 87(2)(b)'s left arm. § 87(2)(b) did not have strength to get out so he struggled by pulling his arms away further into the vehicle. PO Nicoletti handcuffed § 87(2)(b)'s left wrist and then handcuffed his wrist to the steering wheel. PO Nicoletti then entered the vehicle and sat on top of § 87(2)(b) facing § 87(2)(b). PO Nicoletti grabbed § 87(2)(b)'s right hand, and punched him on the left side of his head, above his left ear, at least twice. § 87(2)(b) passed out for approximately one minute. When § 87(2)(b) awoke, he was in handcuffs and sitting in his vehicle. PO Nicoletti was out of the vehicle and pulling on § 87(2)(b)'s arms. § 87(2)(b) continued moving his body away. There were additional uniformed officers at the scene. PO Nicoletti told the officers that § 87(2)(b) had a firearm in the vehicle and that he had bitten him. § 87(2)(b) denied both allegations. Sgt. Reyes approached and assisted § 87(2)(b) in exiting the vehicle. However, § 87(2)(b) was unable to sustain his balance and he fell and landed on his back. § 87(2)(b) lost consciousness again and, when awoke, he was on a gurney and being brought to the ambulance. § 87(2)(b) was taken to § 87(2)(b). He was not sure what treatment he received. He sustained bruises on his wrists from handcuffs and bruises on his head from the punches. § 87(2)(b) continues suffering headaches and migraines from the strikes to his head (**Board Review 07**). § 87(2)(b) provided photographs of his head and wrists (**Board Review 08**).

The pre-hospital care report notes § 87(2)(b) complained of pain in his chest and head. EMT § 87(2)(b) noted that upon arrival, § 87(2)(b) was found sitting in the driver side seat of his car awake and alert, and complaining of pain to his chest and head. § 87(2)(b) refused to communicate with the EMTs. The EMTs attempted to get § 87(2)(b)'s blood pressure, but § 87(2)(b) swung his arms violently so the EMTs moved back. The officers then tried to subdue § 87(2)(b). The officers were able to calm § 87(2)(b) down. § 87(2)(b)'s medical records from § 87(2)(b) also note § 87(2)(b)'s chief complaint, as per EMS, as chest pain and headache. As per NYPD, § 87(2)(b) locked himself in his car from EMS and NYPD. § 87(2)(b) stated that officers hit him in the head and left wrist. He denied loss of consciousness. He complained of chest pain, palpitation, and dizziness. A physical examination revealed a hematoma to the left part of § 87(2)(b)'s scalp and swelling and tenderness to his left wrist (see **Privileged Documents**).

The video recording shows § 87(2)(b) sitting in his vehicle. PO Nicoletti and PO Johnson reach inside through the driver side, but it is unclear what they are doing. Approximately a minute and a

half later, PO Nicoletti asks § 87(2)(b) what he is doing and asks to show his hands, while PO Johnson runs to the passenger side of the vehicle. § 87(2)(b)'s left arm is handcuffed to the steering wheel and PO Nicoletti appears behind § 87(2)(b) with his left arm appears around the left side of § 87(2)(b)'s body. PO Johnson reaches over § 87(2)(b)'s body and attempts to remove the handcuff from § 87(2)(b)'s left wrist. Approximately thirty seconds later, at 02:11 seconds, PO Nicoletti yells, "Stop biting me. Stop biting me." Unidentified individuals on the sidewalk state, "He's biting him." At 02:27 seconds, PO Nicoletti states, "Give me your hand. Stop biting me," and an unidentified individual states, "He's biting his ass." The camera angle moves closer and depicts § 87(2)(b)'s left arm handcuffed to the steering wheel and PO Nicoletti leaning behind § 87(2)(b) with his left arm around § 87(2)(b). § 87(2)(b)'s face is not visible. PO Nicoletti attempts to move his left arm away from § 87(2)(b) but he is unable to do so. PO Nicoletti repeats, "Give me your hand. Stop biting me. Stop biting me." At 02:29 seconds, unidentified individuals state, "He's biting him." At 02:46 seconds, Sgt. Reyes arrives and approaches the driver side. At 03:17 seconds, PO Nicoletti exits § 87(2)(b)'s vehicle. The video does not clearly depict § 87(2)(b) biting PO Nicoletti or PO Nicoletti punching § 87(2)(b). **(Board Review 02 and 03).**

PO Nicoletti and PO Johnson stated that they approached § 87(2)(b)'s vehicle to see why § 87(2)(b) was not leaving. § 87(2)(b) breathed heavily and grabbed his chest and stomach, and the officers were concerned that § 87(2)(b) was having heart issues. PO Nicoletti spoke to § 87(2)(b) through the closed window. He asked § 87(2)(b) if he needed an ambulance and he asked him to open the door to the vehicle. § 87(2)(b) did not respond. PO Nicoletti called for an ambulance. § 87(2)(b) stopped grabbing his chest and looked normal, and he began using his cellphone. PO Nicoletti spoke to § 87(2)(b) through the window again and § 87(2)(b) began grabbing his chest and gesturing for the officers to go away. The officers waited for the ambulance to arrive, which took approximately eight minutes. PO Nicoletti and PO Johnson then backed away from § 87(2)(b)'s vehicle to give the EMTs room to render aid. § 87(2)(b) opened his window. The EMTs spoke to § 87(2)(b) but neither officer could hear what they said. Somehow, neither officer knew how, the EMTs opened the driver side door. § 87(2)(b) then began to punch and kick the EMTs **(Board Review 09 and 10).**

PO Nicoletti stated that he instructed the EMTs to back away from § 87(2)(b) and he approached the driver side door. PO Nicoletti did not know what PO Johnson was doing because he was focused on § 87(2)(b). PO Nicoletti reached inside of § 87(2)(b)'s vehicle toward § 87(2)(b)'s hands to restrain him and render him aid. PO Nicoletti attempted to grab § 87(2)(b)'s hands, but § 87(2)(b) kept reaching around. One of the EMTs went to the back passenger side of the vehicle to attempt to assist PO Nicoletti at restraining § 87(2)(b). § 87(2)(b) then began reaching under the back passenger seat. PO Nicoletti could not see § 87(2)(b)'s hand and he did not know what he was reaching for. PO Nicoletti commanded § 87(2)(b) to stop reaching under the seat, at which point the EMT ran away from the vehicle. PO Nicoletti assumed that the EMT ran away from the vehicle because he did not know for what § 87(2)(b) was reaching. PO Nicoletti reached toward § 87(2)(b)'s hand and § 87(2)(b) bit PO Nicoletti's hand causing PO Nicoletti pain. PO Nicoletti commanded § 87(2)(b) to stop biting him, but § 87(2)(b) continued to bite him. PO Nicoletti punched § 87(2)(b) in the back of the head to cause him to stop biting him. PO Nicoletti did not know if he punched § 87(2)(b) more than once, but § 87(2)(b) stopped biting him and he stopped punching him. § 87(2)(b) then began to bite his own hand. PO Nicoletti



**Allegation B: Abuse of Authority- Police Officer Mark Nicoletti damaged § 87(2)(b)'s property.**

§ 87(2)(b) stated that while pulling on his arm, PO Nicoletti also pulled on his shirt tearing it apart. PO Nicoletti also allegedly damaged the reclining portion of the driver seat of the vehicle after jumping on top of § 87(2)(b). § 87(2)(b) also alleged that PO Nicoletti grabbed § 87(2)(b)'s cellphone, a white Galaxy S5, from the center console and threw it towards the rear of the vehicle. § 87(2)(b) later noticed that black liquid inside the cellphone spread throughout the cellphone screen (**Board Review 07**). § 87(2)(b) provided a photograph which depicts his torn shirt. He did not take photographs of his damaged cellphone or the driver seat (**Board Review 08**).

The video evidence does not depict these allegations (**Board Review 02 and 03**).

PO Nicoletti acknowledged that § 87(2)(b)'s shirt's was torn at some point during the struggle, but he was uncertain as to how this occurred. PO Nicoletti did not see § 87(2)(b)'s cellphone or any damage to a cellphone, and he denied throwing a cellphone to the back of the vehicle. PO Nicoletti did not observe any damage to § 87(2)(b)'s driver seat (**Board Review 09**).

PO Johnson also stated that § 87(2)(b)'s shirt was ripped as a result of the struggle, but she did not know how it was ripped. PO Johnson did not see § 87(2)(b)'s cellphone and she did not see any officer throw his cellphone. PO Johnson did not observe any visible damage to § 87(2)(b)'s vehicle, including the driver seat (**Board Review 10**).

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

Squad: 12

Investigator: \_\_\_\_\_ Raquel Velasquez \_\_\_\_\_ January 30, 2017  
Signature Print Date

Squad Leader: \_\_\_\_\_ Lily Carayannis \_\_\_\_\_ January 30, 2017

Signature

Title/Print

Date